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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,673	05/03/2005	John Nike	N57.12-0001	9571
27367 7590 03/17/2008 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319				
EXAMINER				
JUSKA, CHERYL ANN				
ART UNIT		PAPER NUMBER		
1794				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/533,673

Applicant(s)

NIKE, JOHN

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-893)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed on December 20, 2007, in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. Applicant's amendment filed with the RCE on December 20, 2007, has been entered. Claims 1-35 have been cancelled and new claims 36-53 have been added.

3. The cancellation of the previous claims renders moot prior art rejections set forth in the last Office Action, sections 3-8 (Final Rejection, 10/01/07). However, the new claims are rejected as set forth below.

Claim Objections

4. Claim 38 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. Claim 38 limits the looped filament carpet to having a construction whereby filaments are woven through a backing sheet to provide loops. However, claim 36, from which

claim 38 depends, already limits the looped filament carpet to comprising a backing sheet with filaments woven through said backing sheet to provide a pile. Thus, it is not clear how claim 38 further limits parent claim 36.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 36, 38-43, 47, 49, and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,822,658 issued to Pacione.

Applicant claims an artificial ski slope comprising (a) a looped filament carpet comprising a backing sheet with filaments woven therethrough to provide a pile which is continuous across the backing sheet and (b) a base layer that provides drainage and cushioning, wherein said base layer is fixed to an underlying surface and the carpet being releasably attached to said base layer. Additionally, applicant claims a method of constructing an artificial ski slope comprising the steps of (a) attaching a base layer configured to provide drainage and cushioning to an underlying surface and (b) releasably attaching a looped filament carpet to said base layer, wherein said carpet comprises a backing sheet to provide a pile which is continuous across said backing sheet.

Pacione discloses a carpet having a continuous looped pile surface 14 sewn (tufted) into a primary backing layer 12 (i.e., backing sheet) (col. 6, lines 6-9 and Figures 1 and 3). The pile

surface may be multi-level looped (col. 6, lines 9-13) and may be made of filaments such as nylon (col. 6, lines 13-16). An adhesive backcoat 20 or foam layer 40 bonds the tufted primary backing to a secondary backing 16 (col. 6, lines 23-28 and Figures 1 and 3). Said secondary backing has a lower surface comprised of loops for resiliency and for releasably engaging with a hooked base material adhered to an underlying floor surface (abstract, col. 6, lines 17-23 and 31-42, and Figure 2). Note applicant's claimed "base layer that provides drainage and cushioning" corresponds to Pacione's hooked base material, wherein said hooked base material is capable of providing the properties of drainage and cushioning.

Thus, Pacione teaches applicant's invention with the exception that the carpet material is employed as an artificial ski slope. However, it is argued that the present claim recitations to a ski slope are not given patentable weight at this time. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The Pacione carpet meets applicant's structural and chemical limitations and, hence, is capable of performing as a ski slope. Thus, claims 36, 38, 39, 43, 47, 49, and 50 are anticipated by the cited Pacione reference.

Regarding claims 40 and 41, Pacione teaches primary backings may be a woven fabric of jute or polypropylene or a nonwoven fabric typically made of polypropylene (col. 1, lines 14-18). Since jute is inherently water absorbent the woven primary backing of Pacione anticipates claim 40. Additionally, even though the nonwoven primary backing (i.e., felt) is made of an inherently hydrophobic fiber (i.e., polypropylene), the structure of the nonwoven fabric

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inherently provides at least some moisture retaining properties. Therefore, claim 41 is also anticipated by the nonwoven primary backing of Pacione.

With respect to claim 42, a woven pile fabric is inherently “configured to retain water” at least to some degree due to the nature of the pile structure and primary backing. Therefore, claim 42 is also rejected.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 46 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione reference.

Regarding claim 46, Pacione fails to explicitly teach a “random directional weave pattern.” However, it would have been obvious to one of ordinary skill in the art employ a random or unidirectional pile in order to provide a desired aesthetic function (e.g., hiding of seams, improved uniformity, etc.). Thus, claim 46 is also rejected.

With respect to claim 48, it would have been obvious to one of ordinary skill in the art to employ a pile height difference as presently claimed, absent a showing of unexpected results or criticality for the claim height differential. Note Pacione explicitly teaches the desirability of multi-level loop pile (col. 6, line 11). Additionally, it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges

involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, claim 48 is also rejected over the Pacione reference.

9. Claims 44, 45, and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Pacione '658 reference in view of US 6,298,624 issued to Pacione.

While Pacione '658 fails to teach the presently claimed tessellating sections or attachment strips, both are known in the art. For example, Pacione '624 discloses pile floor coverings comprising said tessellating sections and attachment strips (see abstract, Figures 13 and 18-21. Therefore, it would have been obvious to one of ordinary skill in the art to employ said tessellating sections and attachment strips in order to facilitate installation and/or enhance installation options. Therefore, claims 44, 45, and 51-53 are rejected as being obvious over the cited prior art.

10. Claims 36-46 and 49-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson.

In the event the ski slope recitations are given weight, the claims are held obvious over Kuriyama in view of Larson. Specifically, Kuriyama discloses an artificial lawn suitable for use as a ski slope (translation, sections [0001], [0002], and [0006]). The slope comprises a construction base (e.g., concrete), a hook fastener substrate adhered to said base, and a carpet having a backing of a loop fastener for engagement with said hook fastener (abstract and Figure 1). Figure 2 shows a carpet having tessellating sections (section [0007]), while Figure 3 shows attachment of the hook fastener substrate to the base by an anchor pin (section [0008]). Note applicant's claimed "base layer that provides drainage and cushioning" corresponds to

Kuriyama's hooked base material, wherein said hooked base material is capable of providing the properties of drainage and cushioning.

While the pile surface of Kuriyama is shown as cut pile, it would have been readily obvious to one of ordinary skill in the art to substitute loop pile. For example, Larson teaches a loop pile carpet may be preferable to cut pile in artificial ski slopes (col. 4, lines 5-21). Hence, it would have been obvious to one of ordinary skill in the art to employ loop pile to provide improved mechanical lock with a bed of ice and/or for improved resiliency of pile.

Additionally, Larson teaches the pile carpet comprises a fabric base with pile fibers projecting upwardly from said base (i.e., a backing sheet with filaments woven through said backing sheet to provide a pile) (col. 3, lines 60-63). Larson also teaches the pile may be made of nylon (col. 3, lines 64-67). Since Kuriyama is silent with respect to the pile construction and composition, one must look to the prior art such as Larson for guidance. Thus, it would have been readily obvious to employ the pile structure and chemistry of the Larson patent in the Kuriyama invention since said pile structure and chemistry are known to be suitable for the intended use. Therefore, claims 26-45 and 49-53 are rejected over the cited prior art.

Regarding claim 46, the cited prior art fails to explicitly teach a "random directional weave pattern." However, it would have been obvious to one of ordinary skill in the art employ a random or unidirectional pile in order to provide a desired aesthetic function (e.g., hiding of seams, improved uniformity, etc.). Thus, claim 46 is also rejected.

11. Claims 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-046516 issued to Kuriyama in view of US 4,148,477 issued to Larson as applied to claim 36 above and in further view of US 4,822,658 issued to Pacione.

Kuriyama and Larson fail to teach the use of at least two different pile heights. However, it would have been readily obvious to employ the claimed height differential since multi-level loop pile structures are well known in the art as evidenced by Pacione. Hence, one would be motivated to employ a multi-level loop pile to obtain a desirable aesthetic appearance and/or a desirable pile structure (e.g., resiliency). Therefore, claims 47 and 48 are also rejected.

Response to Arguments

12. Applicant's arguments filed with the RCE on 12/20/07 have been fully considered but they are not persuasive.

13. Specifically, applicant asserts the new claims 36-53 are patentable over Pacione '658 since Pacione's base layer 18 (i.e., secondary backing) is bound to the primary backing layer via a layer of latex adhesive (Amendment, page 5, 3rd paragraph). Applicant contends this is contrary to the presently claimed base layer being releasably attached to the carpet layer (Amendment, page 5, 4th paragraph). The examiner respectfully disagrees. First, the rejection over Pacione '658 does not correlate the claimed "base layer" to Pacione's base layer 18 or secondary backing, but rather the presently claimed "base layer" corresponds to Pacione's hooked base material. Secondly, applicant's claims do not exclude the presence of Pacione's base layer 18 or a secondary backing. Thus, applicant's arguments regarding the Pacione '658 reference are found unpersuasive.

Conclusion

14. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cheryl Juska/
Primary Examiner
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